Reid

3 Otto 396

SUPREME COURT OF THE UNITED STATES.

No. 12.—ORIGINAL.

EX PARTE IN THE MATTER OF OTTO H. KARSTENDIECK, PETITIONER.

PETITION FOR HABEAS CORPUS.

FILED NOVEMBER 17, 1876.

To the honorable the Supreme Court of the United States of America:

The petition of Otto H. Karstendieck, a citizen of Louisiana, with respect, humbly represents that your pet'r was recently indicted in the circuit court of the United States for the district and circuit of Louisiana, at New Orleans, under section 5440 Rev. Statutes of the United States, for a conspiracy to commit an offence or to defraud the United States, for which the punishment is defined as follows: "All the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not over two years." That under said indictment petitioner plead "not guilty," and was tried by a jury, who rendered a verdict of guilty on said charge, and that by virtue thereof the hon'able W. B. Woods, sole presiding judge of the said circuit court, on the second day of June, 1876, rendered judgment & signed the sentence as per Exhibit A, made part hereof, and as will more fully appear by the exhibits marked,
2 annexed, & made part hereof.

Now, your pet'r alleges that in execution of said sentence the United States Government, or the marshal thereof at New Orleans, first caused him to be imprisoned in the parish jail of New Orleans, La., and afterwards caused pet'r to be delivered over to the superintendent of the State penitentiary at Moundsville, in the State of West Virginia, & your pet'r is now incarcerated therein and illegally deprived of his liberty & daily subjected to its discipline, rules, and regulations, without warrant of law or competent authority, & for the term of 16 months from the 2d June, 1876, & pay a fine of two thousand dollars, all in direct conflict with the following statute of the United States, to wit: "Sect. 5541" of the Revised Statutes of the United States says:

"In every case where any person convicted of any offence against the United States is sentenced to imprisonment for a period longer than one year, the court by which the sentence is passed may order the same to be executed in any State jail or penitentiary within the district or State where such court is held, the use of which jail or penitentiary is
3 allowed by the legislature of the State for that purpose."

Now, your petitioner further shows that by Exhibit B, also annexed and made part hereof, the legislature of the State of Louisiana passed a statute in 1814, & re-enacted it in 1870 by its revised Code, which was & now is in full force, in the following words, to wit: "All the sheriffs, jailors, prison-keepers, & their deputies within this State to whom any person shall be sent or committed by the marshal of the district of Louisiana or his deputies under the authority of the United States, whether in civil or criminal process, or upon any process or warrant which may be issued by the President of the United States, or to those to whom he may delegate authority, for any cause whatever under the law of the United States, shall be and they are hereby enjoined & required to receive such prisoners into custody & keep the same safely until they shall be discharged by due course of law; & all such sheriffs, jailors, prison-keepers, and their deputies offending in the premises shall be liable to the same pains & penalties, & the par-
4 ties aggrieved shall be entitled to the same remedies against them or any of them as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of the State."

Pet'r further alleges that by virtue of said statute he was actually handed to and was imprisoned in the parish of New Orleans, and remained in its custody under said sentence for several weeks before his

illegal removal to the said penitentiary at Moundsville, West Virginia, all which more fully appears by Exhibit C, hereto annexed and made part hereof; & that his removal therefrom & his incarceration in said penitentiary & his subjection to its rules, regulations, & discipline are contrary to law & are oppressive, illegal, & unwarranted.

Your pet'r denies that there is any law to authorize the Attorney-General of the United States, or the circuit court aforesaid, to order or designate in such a case as this that y'r pet'r be imprisoned in the penitentiary at Moundsville, West Virginia, or in any penitentiary at any other place, for his imprisonment, employment, and confinement under said indictment, finding of the jury, the statutes in such case made
5 & provided, or of a lawful sentence thereunder, but on the contrary pet'r alleges that the authority of the Att'y-General or the said court to designate a jail or penitentiary is limited and special, & that it is a power qualified & coupled with conditions-precedent, which did not exist in this case, and annulled the power, and which said Att'y-General or said court could only lawfully exercise in case the State of Louisiana had not by her legislature provided for receiving or refused the use of its jails or penitentiary to prisoners of the United States, & that said Att'y-General Pierrepont has therefore misconstrued or inadvertently usurped authority & exceeded his powers & duties as defined by law in this case; and moreover, your pet'r charges that he is illegally held & detained in said penitentiary because the legislature of the State of West Virginia has never passed any statute or given its consent to receive prisoners of the U. States convicted of crimes in its penitentiary, and said State of West Virginia was not within the category of States from which he was authorized to designate, & that the attempt of the directors of said penitentiary to contract with
6 the Att'y-Gen'l is without validity, & absolutely beyond its legitimate powers, & null & void; all which will more fully appear by Exhibit' X & Z.

Your pet'r alleges that he is illegally sentenced and condemned to an ignominious and infamous imprisonment, contrary to and in violation of the terms and spirit of the statute under which he was indicted and found guilty, and that the penalties of convict treatment & discipline have been superadded, contrary to the Constitution of the U. S., & in violation of justice and law. Your pet'r alleges further that he is now in the custody of Wm. L. Bridges, superintendent of the penitentiary of the State of West Virginia, at Moundsville, and illegally deprived of his liberty and treated as a convict therein; and that said superintendent pretends to hold your pet'r by virtue of said illegal sentence, designation, and order of commitment, and under color of authority of the U. S., a copy of which is hereto annexed and marked "Exhibit A;" and pet'r specially charges that the execution of the sentence against your pet'r in said penitentiary
7 is unwarranted, illegal, null & void, for the reasons stated, and that superintendent of said penitentiary has no lawful right or authority for the pet'r's detention therein. Pet'r moreover alleges that the sentence and execution are illegal because said circuit court exceeded its powers & jurisdiction in the premises, as defined by law, and the Att'y-Gen'l was utterly without power and had no right to designate any penitentiary in pet'r's case, as stated in the sentence & designation to the court, wherein pet'r should be incarcerated, and consequently the acts and events which have occurred since the finding of the jury, including the said illegal sentence, and especially the partial execution

thereof by imprisonment in the parish jail of New Orleans, your pet'r claims he is and becomes entitled to his liberty. And, furthermore, pet'r charges that the order of imprisonment is deficient in the legal requisites, because it adds new and infamous and onerous penalties, not sanctioned or named in the law under which pet'r was convicted
8 and condemned, and which are unauthorized by the statutes of the United States in such cases, and that said sentence is being executed by said superintendent, who is a person not authorized for this purpose, and said person is not the person to whom the law has prescribed the duty of imprisoning him. Your pet'r lastly alleges that he has no other legal means of getting relief except by the writ of habeas corpus.

Wherefore the pet'r prays that, the premises, laws, affidavits, exhibits, &c., being considered, your honors will be pleased to issue the great writ of habeas corpus, directed to William L. Bridges, the superintendent at Moundsville, West Virginia, commanding him to appear and produce the body of Otto H. Karstendiek, and ordered to make due return thereof within days thereafter, to wit, on the , 1876, before honorable justices of the S. C. of U. S., and, after due proceedings had, your pet'r have judgment in his favor, maintaining said writ and setting him at liberty, and relieving him from said imprisonment & fine, and for all other general relief as he may be entitled to; &
9 pet'r will ever pray, &c.

OTTO H. KARSTENDIEK.

UNITED STATES OF AMERICA,
District of West Virginia, sct.:

I, James P. Rogers, a United States commissioner, duly appointed and qualified as such, within and for the district of West Virginia, do hereby certify that Otto H. Karstendieck, whose name is signed to the annexed and foregoing petition, this day personally appeared before me in my said district, and made solemn oath upon the holy Evangely of Almighty God that the facts and allegations contained in the foregoing petition, by him subscribed, are true so far as the same are stated upon his own knowledge, and that so far as they are stated upon information he believes them to be true.

OTTO H. KARSTENDIEK.

Sworn to and subscribed before me, in my said district, this day of November, 1876.

JAMES P. ROGERS,
U. S. Commissioner.

Filed 17th November, 1876.

10 IN THE MATTER OF OTTO H. KARSTENDIEK and JOHN HENDERSON, praying for writs of habeas corpus. } No. 735 & 736.

Whereas doubts have arisen as to the jurisdiction of the S. C. on the appeal as taken and now on file; and whereas the parties applying for the writ have the right to make new & direct application to the Supreme Court of the U. S. for issuance of the writ; now, in order to save costs, it is hereby agreed between the parties hereto that the petition and exhibits be deemed to be a direct application to the court, and considered as reiterated and sworn to, and that a preliminary order has been issued to show cause, and the case regularly before the court, on the merits, for

adjudication, and that the parties hereto will abide by the decision to be rendered on the issues thus presented, making the transcripts filed to stand in lieu of the required petition, exhibits, & return of a new & direct application for the court under the act of 1789 & other laws of Congress.

Washington, Oct. , 1876.

S. F. PHILLIPS,
Sol. Gen'l, &c., for the United States.
D. C. LABATT,
Attorney for Relators.

N. O., *Oct.* 27, 1876.

O

SUPREME COURT OF THE UNITED STATES.

No. 735.

EX PARTE: IN THE MATTER OF OTTO H. KARSTENDIECK PETITIONER, APPELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Style of court	1	1
Petition	1	1
Exhibit A	9	4
B	30	12
C	33	13
X	34	14
Q	35	14
Stipulation	37	15
Opinion of Chief-Justice	39	15
Order of Chief-Justice	52	20
Order of district court	52	21
Prayer for appeal	53	21
Appeal	53	21
Clerk's certificate	53	21

1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the district of Maryland, begun and held at the city of Baltimore on the first Monday of April, (being the third day of the same month,) in the year of our Lord one thousand eight hundred and seventy-six.

Present: The honorable Hugh L. Bond, circuit judge; Archibald Stirling, jun., esquire, attorney; Edward Y. Goldsborough, esquire, marshal.

JAMES W. CHEW, *Clerk.*

Among other were the following proceedings, to wit:

PETITION OF OTTO H. KARSTENDICK FOR HABEAS CORPUS, EX PARTE.

Be it remembered that on the 19th day of September, in the year of our Lord 1876, the said Otto H. Karstendick, by David C. Labatt, his attorney, filed in the circuit court of the United States for the fourth circuit, in and for the Maryland district, the following petition, exhibits, stipulation, opinion, and order, to wit:

Petition.

2 To the honorable Morrison R. Waite, Ch. Justice of the Supreme Court of the United States of America:

The petition of the United States of America on the relation of Otto H. Karstendick, citizen of the State of Louisiana, with respect humbly represents:

That your pet'r was recently indicted in the circuit court of the United States for the district & circuit of Louisiana, at New Orleans, under section 5440, Revised Statutes of the United States, for a conspiracy to commit an offence, or to defraud the United States, for which the punishment is defined as follows:

"All the persons to such conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not over two years."

That under said indictment petitioner plead "Not guilty," and was tried by a jury, who rendered a verdict of guilty on said charge, and that, by virtue thereof, the judge, Hon. W. B. Woods, sole presiding judge of the said circuit court, on the second day of June, 1876, rendered judgment & signed the sentence, as per Exhibit A, made part hereof, & as will all more fully appear by the exhibits annexed, marked & made part hereof.

Now, your pet'r alleges that, in execution of said sentence, the marshal of the United States at New Orleans first imprisoned him in the parish jail of New Orleans, La., & afterwards caused pet'r to be delivered
3 over to the superintendant of the penitentiary at Moundsville, in the State of West Virginia, and your pet'r is now incarcerated therein & illegally deprived of his liberty, and daily subjected to its penitentiary discipline, rules, & regulations, without warrant of law or competent authority, and for the term of sixteen months from the second day of June, 1876, & to pay a fine of two thousand dollars, all in direct conflict with the following statute of the United States, to wit, sect. 5541 of the Revised Statutes of the United States, providing as follows:

"In every case where any person convicted of any offence against the United States is sentenced to imprisonment for a period longer than one year, the court by which the sentence is passed may order the same to be executed in any State jail or penitentiary within the district or State where such court is held, the use of which jail or penitentiary is allowed by the legislature of the State for that purpose."

Now, your pet'r further shows that, by Exhibit B, also annexed & made part hereof, the legislature of the State of Louisiana has passed a statute in 1814, & re-enacted in 1870, which was, & now is, in full force, in the following words, to wit: "All the sheriffs, jailers, prison-keepers, and their deputies within this State, to whom any person shall be sent or committed by the marshal of the district of Louisiana,
4 or his deputies, under the authority of the United States, whether in civil or criminal process, or upon any process or warrant which may be issued by the President of the United States, or to those to whom he may delegate authority, for any cause whatever under the law of the United States, shall be, and they are hereby, enjoined & required to receive such prisoners into custody, and keep the same safely until they shall be discharged by due course of law; and all such sheriffs, jailers, prison-keepers, and their deputies, offending in the premises, shall be liable to the same pains & penalties, and the parties aggrieved shall be entitled to the same remedies against them, or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this State."

Petitioner further alleges that, by virtue of said statute, he was actually handed over to, and was imprisoned in, the parish jail of New Orleans, and remained in its custody under said sentence for several weeks before his illegal removal to the said penitentiary at Moundsville, West Virginia, all which will more fully appear by Exhibit C, hereto annexed & made part hereof, and that his removal therefrom and his incarceration in said penitentiary, & his subjection to its rules, regulations, and discipline are oppressive, illegal, and unwarranted.

Your pet'r denies that there is any law to authorize the Attor-
5 ney-General of the U. S., or the circuit court aforesaid, to order or designate in such a case as this your pet'r to be imprisoned in the penitentiary at Moundsville, West Virginia, or any penitentiary at any other place for his imprisonment, employment, and confinement under said indictment, finding of the jury, statute, or sentence; but, on the contrary, pet'r alleges that the authority of the Attorney-General or the said court to designate a jail or penitentiary is limited & special, and that it is a power qualified & coupled with conditions-precedent which do not exist, & destroy the power, & which said Attorney-General or said court could only exercise in case the State of Louisiana had not made provision for receiving or refuse the use of its jails or penitentiary to prisoners of the United States, and that said Attorney-General has therefore misconstrued or usurped authority & exceeded his powers & duties as defined by law in this case; and, moreover, your pet'r charges that he is illegally held & detained in said penitentiary, because the legislature of the State of West Virginia has never passed any statute or given its consent to receive prisoners of the U. S. convicted of crime in its penitentiary, and that the attempt of the directors of said penitentiary to contract with the Atty.-General is without validity, & absolutely beyond its powers, & null & void; all which will more fully appear by exhibits 2 & 4.

6 Your pet'r alleges that he is illegally sentenced and condemned

to an ignominious and infamous imprisonment, contrary to and in violation of the terms & spirit of the statute under which he was indicted & found guilty, & that the penalties of convict treatment & discipline have been superadded, contrary to & in violation of the Constitution of the United States & of justice and law.

Your pet'r alleges further that he is now in the custody of William L. Bridges, superintendent of the penitentiary of the State of West Virginia, at Moundsville, and illegally deprived of his liberty, & treated as a convict therein, & that said superintendent pretends to hold your pet'r by virtue of said illegal sentence, designation, & order of commitment, & under color of authority of the United States, a copy of which is hereto annexed & marked "Exhibit A;" and pet'r specially charges that the execution of the sentence against your pet'r is unwarranted, illegal, null, & void for the reasons herein stated, and that the said superintendent has no lawful right or authority for petitioner's detention in said penitentiary.

Petitioner moreover alleges that the sentence and execution are illegal, because the said circuit court exceeded its powers & jurisdiction in the premises as defined by law, and the Attorney-General was utterly
7 without power & had no right to designate any penitentiary in pet'r's case, as stated in the sentence & designation to the court, wherein pet'r should be incarcerated, & consequently the acts and events which have occurred since the finding of the jury, including the said illegal sentence, & especially the partial execution thereof by imprisonment in the parish jail of New Orleans. Your pet'r humbly claims he is & becomes entitled to his liberty.

And, furthermore, pet'r charges that the order of imprisonment is deficient in the legal requisites, because it adds new, infamous, & onerous penalties, not sanctioned or named in the law under which pet'r was convicted & condemned, & which are unauthorized by the statutes of the United States in such cases, & that said sentence is being executed by said superintendent, who is a person not authorized for that purpose, & said person is not the person to whom the law has prescribed the duty of imprisoning him. Your pet'r lastly alleges that he has no other legal means of getting relief except by the writ of habeas corpus.

Wherefore pet'r prays that the premises, laws, affidavits, exhibits, &c., being considered, your honor will be pleased to issue the great writ of habeas corpus directed to said William L. Bridges, the superintendent of the penitentiary at Moundsville, West Virginia, commanding him to appear and produce the body of Otto H. Karstendick, & ordered to make
8 due return thereof within twenty days thereafter, to wit, on the at , before the Hon. , justice of the Supreme Court of the United States, at , & that, after due proceedings had, your pet'r have judgment in his favor, setting him at liberty & relieving him from said fine & imprisonment, & for all other general & equitable order & relief as he may be entitled to, & your pet'r will, as in duty bound, pray, &c.

OTTO H. KARSTENDICK.

THE UNITED STATES OF AMERICA,
District of West Virginia, sct:

On this 1st day of August, A. D. 1876, before me, James P. Rogers, a United States commissioner within and for the district of West Virginia, duly appointed and qualified as such, personally appeared Otto H. Karstendick, and made solemn oath in due form of law that the facts and allegations over his signature, which is affixed to the annexed and

foregoing petition, and the several allegations contained in the said petition, so far as they are stated upon his own knowledge, are true, and that so far as the same are stated upon information he believes them to be true.

OTTO H. KARSTENDICK.

Sworn to and subscribed before me in my said district this 1st day of August, 1876.

JAMES P. ROGERS,
U. S. Commissioner for the District of West Virginia.

9 EXHIBIT A.

UNITED STATES OF AMERICA:
Circuit court of the United States, fifth circuit and district of Louisiana

UNITED STATES
vs.
EDWARD FEHRENBACH ET AL. } No. 513.

Indictment.—Filed April 8th, 1876.

UNITED STATES OF AMERICA,
District of Louisiana:

In the circuit court of the United States in and for the fifth circuit and district of Louisiana. Of the November term thereof, A. D. 1875.

The grand jurors of the United States of America, duly empanelled, sworn, and charged to enquire, in and for the district of Louisiana, on their oath present that Edward Fehrenbach, yeoman, Otto H. Karstendick, merchant, William M. Todd, yeoman, F. Reynolds, yeoman, whose Christian name is to said jurors unknown, John R. Beals, yeoman, Paul Bruce, yeoman, Waldo P. Todd, yeoman, John McWhirten, yeoman, and Charles W. Wills, yeoman, all late of the district of Louisiana,
10 on the ninth of April, in the year of our Lord one thousand eight hundred and seventy-four, at the city of New Orleans, in the district of Louisiana aforesaid, with force and arms, fraudulently and unlawfully did combine, conspire, confederate, and agree together and amongst themselves, and with divers other evil-minded and disposed persons, to the jurors aforesaid at present unknown, the said United States of America then and there to defraud of a large sum of money of the internal revenue of the said United States, to wit, of the internal-revenue tax of seventy cents, then and there imposed by the statute of the United States in such case made and provided, upon each and every proof-gallon, of a large quantity of distilled spirits, to wit, one hundred thousand proof-gallons of distilled spirits thereafter to be produced at a certain distillery then and there situate in the first internal revenue collection-district in and of the said State of Louisiana, and within said district of Louisiana; which said distillery was then and there occupied and operated by the said defendant, Edward Fehrenback, the same being the distillery of the said Edward Fehrenback, situate as aforesaid within the district of Louisiana aforesaid and within the jurisdiction of this court.

That in furtherance of said combination, conspiracy, and unlawful agreement so had between the said defendants as aforesaid, and
11 to effect the object of the said combination, conspiracy, and

agreement aforesaid, afterwards, to wit, on the ninth day of April, in the year of Lord eighteen hundred and seventy-four, at and within the district of Louisiana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fehrenback, did, then and there, unlawfully and fraudulently, from the said distillery of him, the said defendant, Edward Fehrenback, aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove or cause to be removed to a place other than the distillery warehouse, situate upon and constituting a part of said distillery premises, to wit, to a place to the jurors aforesaid unknown, a large quantity of distilled spirits, to wit, twenty thousand proof-gallons of distilled spirits, upon which said twenty thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents, upon each and every gallon of the said twenty thousand proof-gallons of distilled spirits, then and there imposed thereon by the statute of the United States of America, in such case made and provided, and to which said United States of America, by virtue of the said statute of the United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there, in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States, of the tax so imposed by the law of the United States, upon each and every of the said twenty thousand proof-gallons of distilled spirits aforesaid, did cheat and defraud.

That, in furtherance of the said combination, conspiracy, and unlawful agreement so had between the said defendants as aforesaid, and to effect the object of the said combination, conspiracy, and agreement aforesaid, afterwards, to wit, on the ninth day of April, in the year of Lord eighteen hundred and seventy-four, at and within the district of Louisiana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fehrenback, did, then and there, unlawfully and fraudulently, from the said distillery of him, the said defendant, Edward Fehrenback, aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or caused to be removed, to a place other than the distillery warehouse, situate upon and constituting a part of said distillery premises, to wit, to a place to the jurors aforesaid unknown, a large quantity of distilled spirits, to wit, twenty thousand other proof-gallons of distilled spirits, upon which said twenty thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents, upon each and every gallon of the said twenty thousand proof-gallons of distilled spirits, then and there imposed thereon by the statute of the United States of America, in such case made and provided, and to which said United States of America, by virtue of the said statute of the United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States, of the said tax so imposed by the law of the United States, upon each and every of the said twenty thousand proof-gallons of distilled spirits aforesaid, did cheat and defraud. That in furtherance of the said combination, conspiracy, and unlawful agreement so had between the said defendants as aforesaid, and to effect the object of the said combination, conspiracy, and agreement aforesaid, afterwards, to wit, on the ninth day of April, in the year of Lord eighteen hundred and seventy-four, at and within the district of Louisi-

ana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fehrenbach, did then and there unlawfully and fraudulently, from the said distillery of him the said defendant, Edward Fehrenback aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or cause to be removed, to a place other than the distillery warehouse, situate upon and constituting a part of said distillery premises, to wit, to a place to the jurors aforesaid unknown, a large quantity of distilled spirits, to wit,
14 twenty thousand other proof-gallons of distilled spirits, upon which said twenty thousand gallons of distilled spirits, and upon each and every proof-gallon thereof the internal-revenue tax of seventy cents upon each and every gallon of the said twenty thousand proof-gallons of distilled spirits, then and there imposed thereon by the statute of the United States of America, in such case made and provided, and to which the said United States of America, by virtue of the said statute of the United States, in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there, in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States, of the said tax so imposed by the law of the United States, upon each and every of the said twenty thousand proof-gallons of distilled spirits aforesaid, did cheat and defraud.

That in furtherance of the said combination, conspiracy, and unlawful agreement so had between the said defendants as aforesaid, and to effect the object of the said combination, conspiracy, and agreement aforesaid, afterwards, to wit, on the first day of April, in the year of our Lord eighteen hundred and seventy-four, at and within the district of Louisiana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fehrenbach, did then and there unlawfully and
15 fraudulently, from the said distillery of him the said defendant, Edward Fehrenbach aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or cause to be removed, to a place other than the distillery warehouse, situate upon and constituting a part of said distillery premises, to wit, to a certain building in the near vicinity of the said building, in which he, the said Edward Fehrenbach, so then and there carried on his said business of producing distilled spirits, to wit, the distillery aforesaid, the precise and accurate description of which said building, to which said distilled spirits was so unlawfully removed as aforesaid, is to the said jurors unknown, to wit, two thousand proof-gallons of distilled spirits, upon which said two thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents upon each and every gallon of the said two thousand proof-gallons of distilled spirits, then and there imposed thereon by the statute of the United States of America in such case made and provided, and to which said United States of America, by virtue of the said statute of the said United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there in the manner aforesaid, by the means aforesaid, at the time and place last afore-
16 said, the said United States of the said tax so imposed by the law of the United States upon each and every of the said two thousand proof-gallons of distilled spirits aforesaid, did attempt to cheat and defraud.

That in furtherance of the said combination, conspiracy, and unlawful agreement so had between the said defendants as aforesaid, and to

effect the object of the said combination, conspiracy, and agreement aforesaid, afterwards, to wit, on the ninth day of April, in the year of Lord eighteen hundred and seventy-four, at and within the district of Louisiana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fehrenbach, did then and there unlawfully and fraudulently from the said distillery of him the said defendant, Edward Fehrenbach aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or cause to be removed, to a place other than the distillery warehouse, situate upon and constituting a part of said distillery premises, to wit, to a place to the jurors aforesaid unknown, a large quantity of distilled spirits, to wit, twenty thousand other proof-gallons of distilled spirits, upon which said twenty thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents upon each and every gallon of the said twenty thousand proof-gallons of
17 distilled spirits, then and there imposed thereon by the statute of the United States of America in such case made and provided, and to which said United States of America, by virtue of the said statute of the United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States of the said tax so imposed by the law of the United States upon each and every of the said twenty thousand proof-gallons of distilled spirits aforesaid, did cheat and defraud, contrary to the form of the statute of the United States of America in such case made and provided, and against the peace and dignity of the said United States.

And the jurors aforesaid, on their oath aforesaid, do further present that the said Edward Fehrenbach, Otto Karstendick, William M. Todd, F. Reynolds, John R. Beals, Paul Bruce, Waldo P. Todd, John McWhirter, and Charles W. Wills, on the first day of May, in the year of our Lord eighteen hundred and seventy-four, at the city of New Orleans, in the district of Louisiana aforesaid, with force and arms, fraudulently and unlawfully did combine, conspire, confederate, and agree together and amongst themselves and with divers other evil
18 minded and disposed persons, to the jurors aforesaid at present unknown, the said United States of America then and there to defraud of a large sum of money of the revenue of the said United States, to wit, of the internal-revenue tax of seventy cents then and there imposed by the statute of the United States in such case made and provided, upon each and every proof-gallon of a large quantity of distilled spirits, to wit, two hundred thousand proof-gallons of distilled spirits before that time produced at a certain distillery then and there situate in the first internal-revenue collection district in and for the said State of Louisiana, and within said district of Louisiana, which said distillery was then and there occupied and operated by the said defendant, Edward Fehrenbach, the same being the distillery of the said Edward Fehrenbach, situate as aforesaid within the district of Louisiana aforesaid, and within the jurisdiction of this court.

That in furtherance of the said combination, conspiracy, and unlawful agreement, so had between the said defendants as aforesaid, and to effect the object of the said combination, conspiracy, and agreement aforesaid, afterwards, to wit, on the second day of May, in the year of Lord eighteen hundred and seventy-four, at and within the district of Louisiana aforesaid, and within the jurisdiction of this court, the said

defendant, Edward Fehrenbach, did then and there, unlawfully
19 and fraudulently, from the said distillery of him the said defendant, Edward Fehrenbach aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or cause to be removed, to a place other than the distillery warehouse, situate upon and constituting a part of said distillery premises, to wit, to a place to the jurors aforesaid unknown, a large quantity of distilled spirits, to wit, twenty thousand proof-gallons of distilled spirits, upon which said twenty thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents upon each and every gallon of the said twenty thousand proof-gallons of distilled spirits, then and there imposed thereon by the statute of the United States of America in such case made and provided, and to which said United States of America, by virtue of the said statute of the United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States, of the said tax so imposed by the law of the United States, upon each and every of the said twenty thousand proof-gallons of distilled spirits aforesaid, did cheat and defraud.

20 That in furtherance of the said combination, conspiracy and unlawful agreement so had between the said defendants as aforesaid, and to effect the object of the said combination, conspiracy, and agreement aforesaid, afterwards, to wit, on the first day of May, in the year of our Lord eighteen hundred and seventy-four, at and within the district of Louisiana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fahrenbach, did then and there, unlawfully and fraudulently, from the said distillery of him the said defendant, Edward Fahrenbach aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or cause to be removed, to a place other than the distillery warehouse, situate upon and constituting a part of said distillery premises, to wit, to a certain building in the near vicinity of the said building, in which he the said Edward Fahrenbach so then and there carried on his said business of producing distilled spirits, to wit, the distillery aforesaid, the precise and accurate description of which said building to which said distilled spirits was so unlawfully removed as aforesaid is to the said jurors unknown, to wit, two thousand other proof-gallons of distilled spirits, upon which said two thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents upon each and every gallon of the said two thousand proof-gallons
21 of distilled spirits, then and there imposed thereon by the statute of the United States of America in such case made and provided, and to which said United States of America, by virtue of the said statute of the said United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America, and then and there, in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States of the said tax so imposed by the law of the United States upon each and every of the said two thousand proof-gallons of distilled spirits aforesaid did attempt to cheat and defraud.

That in furtherance of the said combination, conspiracy, and unlawful agreement, so had between the said defendants as aforesaid, and to

effect the object of the said combination, conspiracy, and agreement aforesaid, afterwards, to wit, on the first day of May, in the year of
Lord eighteen hundred and seventy-four, at and within the district of Louisiana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fahrenback, did then and there unlawfully and fraudulently, from the said distillery of him, the said defendant, Edward Fahrenbach, aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or cause
to be removed, to a place other than the distillery warehouse
22 situate upon and constituting a part of said distillery premises,
to wit, to a place to the jurors aforesaid unknown, a large quantity of distilled spirits, to wit, twenty thousand other proof-gallons of distilled spirits, upon which said twenty thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents upon each and every gallon of the said twenty thousand proof-gallons of distilled spirits, then and there imposed thereon by the statute of the United States of America, in such case made and provided, and to which said United States of America, by virtue of the said statute of the United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there, in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States of the tax so imposed by the law of the United States upon each and every of the said twenty thousand proof-gallons of distilled spirits aforesaid did cheat and defraud.

That in furtherance of the said combination, conspiracy, and unlawful agreement so had between the said defendants as aforesaid, and to effect the object by the said combination, conspiracy, and agreement
aforesaid, afterwards, to wit, on the first day of May, in the year
23 of Lord eighteen hundred and seventy-four, at and within
the district of Louisiana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fahrenbach, did then and there unlawfully and fraudulently, from the said distillery of him, the said defendant, Edward Fahrenbach aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or cause to be removed, to a place other than the distillery warehouse, situate upon and constituting a part of said distillery premises, to wit, to a place to the jurors aforesaid unknown, a large quantity of distilled spirits, to wit, twenty thousand other proof-gallons of distilled spirits, upon which said twenty thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents upon each and every gallon of the said twenty thousand proof-gallons of distilled spirits, then and there imposed thereon by the statute of the United States of America in such case made and provided, and to which said United States of America, by virtue of the said statute of the said United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there, in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States of the tax so imposed by the law
of the United States upon each and every of the said twenty
24 thousand proof-gallons of distilled spirits aforesaid did cheat and defraud.

That in furtherance of the said combination, conspiracy, and unlawful agreement, so had between the said defendants as aforesaid, and

to effect the object of the said combination, conspiracy, and agreement aforesaid, afterwards, to wit, on the third day of May in the year of Lord eighteen hundred and seventy-four, at and within the district of Louisiana aforesaid, and within the jurisdiction of this court, the said defendant, Edward Fahrenback, did then and there unlawfully and fraudulently, from the said distillery of him, the said defendant, Edward Fahrenbach, aforesaid, said distillery being then and there situated within the district of Louisiana as aforesaid, remove, or cause to be removed, to a place other than the distillery warehouse situate upon and constituting a part of said distillery premises, to wit, to a place to the jurors aforesaid unknown, a large quantity of distilled spirits, to wit, twenty thousand other proof-gallons of distilled spirits, upon which said twenty thousand gallons of distilled spirits, and upon each and every proof-gallon thereof, the internal-revenue tax of seventy cents upon each and every gallon of the said twenty thousand proof-gallons of distilled spirits, then and there imposed thereon by the statute of the Unites of America in such case made and provided, and to which
25 said United States of America, by virtue of the said statute of the United States in such case made and provided, was then and there entitled to have and receive, had not then and there been first paid to said United States of America; and then and there, in the manner aforesaid, by the means aforesaid, at the time and place last aforesaid, the said United States of the said tax so imposed by the law of the United States upon each and every of the said twenty thousand proof-gallons of distilled spirits aforesaid did cheat and defraud, contrary to the form of the statute of the said United States in such case made and provided, and against the peace and dignity of the said United States.

(Signed) J. R. BECKWITH,
U. S. Atty.

(Endorsed:) A true bill. Silas Weeks, foreman.

November term, 1876.

NEW ORLEANS, *Monday, April* 10, 1876.

Court met pursuant to adjournment. Present: Hon. W. B. Woods, circuit judge.

On motion of the U. S. attorney, it is ordered that the letter
26 this day received from the Attorney-General of the U. S. be filed and spread upon the minutes; and it is as follows, viz:

DEPARTMENT OF JUSTICE,
Washington, April 1st, 1876.

J. R. BECKWITH, Esq.,
U. S. Attorney, New Orleans, La.

SIR: Under the authority granted by section 5546 of the Revised Statutes of the United States, I designate the penitentiary at Moundsville in West Virginia as the place for the confinement, subsistence, and employment of all persons convicted by the courts of the United States for the district of Louisiana of crime against the United States, and sentenced by said courts to imprisonment longer than one year.

You will bring this designation to the notice of the courts, and have this order entered, if possible, upon the records.

Very respectfully,

EDW. PIERRPONT,
Attorney-General.

April term, 1876.

NEW ORLEANS, *Friday, June 2d*, 1876.

Court met pursuant to adjournment. Present: Hon. W. B. Woods, circuit judge.

UNITED STATES
vs.
EDWARD FEHRENBACH & AL. } No. 513.

And the said Edward Fahrenbach, Otto H. Karsdentick, William M. Todd, and John R. Beals were this day called to the bar of the court for judgment upon the verdict of the said jury upon the matters charged against them in the said indictment, as found by the said jury and of record herein, and being respectively enquired of, by the court, whether they or either of them could anything why the sentence of the court should not be pronounced against them in this behalf; and the said Edward Fahrenback, Otto H. Karsdentick, William M. Todd, and John R. Beals, and each of them, being unable to show and make known any good and sufficient reason in law why judgment should not be pronounced against him, and it having been in due form determined and ascertained that there is no penitentiary within the district of Louisiana suitable for the confinement of persons convicted of crime in the courts of the United States in said district of Louisiana, and the Attorney-General of the United States having, in due form and by and with competent authority, designated the penitentiary at Moundsville, in West Virginia, as the place of confinement, subsistence, and employ-
28 ment of all persons convicted or who may hereafter be convicted by the courts of the United States of crime against the United States of America in said district of Louisiana, and such designation having been in due form notified to the court and entered on the records thereof—

It is considered, by reason of the verdict herein, that the said Edward Fehrenback be confined in the penitentiary of the State of West Virginia, at Moundsville, in said State, for and during the period of thirteen calendar months from and after this day, and that the said Edward Fahrenbach do further pay a fine of one thousand dollars and one-fourth of the costs of this prosecution; and that the said Otto H. Karstendick be confined in the said penitentiary aforesaid for and during the full period of sixteen calendar months from and after this day, and that he, the said Otto H. Karstendick, do also further pay a fine of two thousand dollars and one-fourth of the costs of the prosecution; and that the said William M. Todd be confined in the said penitentiary aforesaid for and during the full period of sixteen calendar months from and after this day, and that he, the said William M. Todd, do also further pay a fine of one thousand dollars and one-fourth of the costs of the prosecution; and that the said John R. Beals be confined in the said penitentiary aforesaid for and during the full period of sixteen calendar months from and after this day, and he, the said John R. Beals, do also further
29 pay a fine of one thousand dollars and the remaining one-fourth of the prosecution; the said costs of prosecution being taxed in full at one hundred and sixty-six $\frac{60}{100}$ dollars, of which sum the one-fourth is forty-one $\frac{65}{100}$ dollars, and that the said United States have execution in due form against the respective property of the said Edward Fahrenbach, Otto H. Karstendick, William M. Todd, and John R. Beals for the said fine and costs taxed against them respectively,

and that the marshal cause this sentence to be executed as to the said Edward Fehrenbach, Otto H. Karstendick, William M. Todd, and John R. Beals respectively.

CLERK'S OFFICE.

I certify the foregoing to be true copies of the indictment and sentence in the case of the United States versus Edward Fahrenback et al., No. 513 of the docket of this court, and a true copy of the letter of Attorney-General of the United States, designating place for confinement, &c., of persons convicted in the U. S. courts for the district of Louisiana, on file and of record in this office.

[PLACE OF SEAL.] Witness my hand and seal of said court, at the city of New Orleans, this 25th day of July, 1876.

F. B. VINOT,
Dy Clk.

30 An act to provide for the custody of prisoners committed under the authority of the United States, and other purposes.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana, in general assembly convened, that all sheriffs, jailers, prison-keepers, and their, and each and every of their, deputies, within this State, to whom any person or persons shall be sent or committed by the marshal of the district of Louisiana or his deputies under the authority of the United States, whether on civil or criminal process, or upon any process or warrant which may be issued by the President of the United States, or those to whom he may delegate authority, for any cause whatever, under the laws of the United States, shall be, and they are hereby, enjoined and required to receive such prisoners into custody, and to keep the same safely, until they shall be discharged by due course of law; and that all such sheriffs, jailers, prison-keepers, and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them or any of them as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this State.

31 STATE OF LOUISIANA,
OFFICE OF SECRETARY OF STATE,
New Orleans, July 25th, 1876.

I hereby certify that the above and foregoing is a true and correct copy of section one of act approved February 28th, 1814, and that the same is re-enacted in section 2841 of Ray's Revised Statutes of the State of Louisiana of 1870; and that said section has been since 1814, and is now, in full force.

Given under my hand and the seal of the State this 25th day of July, [PLACE OF SEAL.] A. D. one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

P. G. DESLONDE,
Secretary of State.

SECTION 2841. All the sheriffs, jailers, prison keepers, and their deputies, within this State, to whom any person shall be sent or committed by the marshal of the district of Louisiana, or his deputies, under the authority of the United States, whether on civil or criminal process, or upon any process or warrant which may be issued by the President of

the United States or those to whom he may delegate authority, for any cause whatever under the law of the United States, shall be and
32 they are hereby enjoined and required to receive such prisoners into custody and keep the same safely, until they shall be discharged by due course of law; and all such sheriffs, jailers, prison-keepers, and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the party aggrieved shall be entitled to the same remedies against them or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this State.

STATE OF LOUISIANA,
OFFICE OF SECRETARY OF STATE,
New Orleans, July 25, 1876.

I hereby certify that the above and foregoing is a true and correct copy of section 2841 of Ray's Revised Statutes of the State of Louisiana of the year 1870.

Given under my hand and the seal of the State this twenty-fifth day of July, A. D. one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[PLACE OF SEAL.]

P. G. DESLONDE,
Secretary of State.

33 EXHIBIT C.

THE STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared William Fagan, personally known to me, who, being duly sworn, deposes and says that he is the criminal-sheriff of the parish of Orleans, in the State and district of Louisiana, and that by virtue of his said office he has full control and charge of the parish prison in the city of New Orleans, in said parish and State. Affiant further deposes that under and by virtue of section 2841, of the revised statutes of the State of Louisiana, passed and approved in 1870, he could receive and confine in said parish prison, and there safely keep until discharged by due course of law, any person who shall be sent to said prison or committed thereto by the marshal of the district of Louisiana, or his deputies, under the authority of the United States, whether on civil or criminal process, or upon any process or warrant which may be issued by the President of the United States or those to whom he may delegate authority, for any cause whatever under the laws of the United States. Affiant further swears that any person so sent or committed is subject to the ordinary rules of said prison; that he is permitted to wear his customary
34 clothing, to receive visitors at all times, to communicate freely with his friends, to provide himself with such comforts in his room and within the prison limits as his means justify and his tastes demand, and that no other restraints are imposed upon such a person than those necessary to secure his safe keeping. Affiant further swears that during the month of , 1876, he did receive and confine in said parish prison, from the marshall of the district of Louisiana, under process or warrant from the circuit court of the United States for the district and circuit of Louisiana, the persons of Otto H. Karstendick, John Henderson, Beales, Todd, and James, and that said persons were held by me so confined within the limits of said prison

and that the marshal cause this sentence to be executed as to the said Edward Fehrenbach, Otto H. Karstendick, William M. Todd, and John R. Beals respectively.

CLERK'S OFFICE.

I certify the foregoing to be true copies of the indictment and sentence in the case of the United States versus Edward Fahrenback et al., No. 513 of the docket of this court, and a true copy of the letter of Attorney-General of the United States, designating place for confinement, &c., of persons convicted in the U. S. courts for the district of Louisiana, on file and of record in this office.

[PLACE OF SEAL.] Witness my hand and seal of said court, at the city of New Orleans, this 25th day of July, 1876.

F. B. VINOT,
D'y Clk.

30 An act to provide for the custody of prisoners committed under the authority of the United States, and other purposes.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana, in general assembly convened, that all sheriffs, jailers, prison-keepers, and their, and each and every of their, deputies, within this State, to whom any person or persons shall be sent or committed by the marshal of the district of Louisiana or his deputies under the authority of the United States, whether on civil or criminal process, or upon any process or warrant which may be issued by the President of the United States, or those to whom he may delegate authority, for any cause whatever, under the laws of the United States, shall be, and they are hereby, enjoined and required to receive such prisoners into custody, and to keep the same safely, until they shall be discharged by due course of law; and that all such sheriffs, jailers, prison-keepers, and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them or any of them as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this State.

31 STATE OF LOUISIANA,
OFFICE OF SECRETARY OF STATE,
New Orleans, July 25th, 1876.

I hereby certify that the above and foregoing is a true and correct copy of section one of act approved February 28th, 1814, and that the same is re-enacted in section 2841 of Ray's Revised Statutes of the State of Louisiana of 1870; and that said section has been since 1814, and is now, in full force.

Given under my hand and the seal of the State this 25th day of July, [PLACE OF SEAL.] A. D. one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

P. G. DESLONDE,
Secretary of State.

SECTION 2841. All the sheriffs, jailers, prison keepers, and their deputies, within this State, to whom any person shall be sent or committed by the marshal of the district of Louisiana, or his deputies, under the authority of the United States, whether on civil or criminal process, or upon any process or warrant which may be issued by the President of

the United States or those to to whom he may delegate authority, for any cause whatever under the law of the United States, shall be and
32 they are hereby enjoined and required to receive such prisoners into custody and keep the same safely, until they shall be discharged by due course of law; and all such sheriffs, jailers, prison-keepers, and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the party aggrieved shall be entitled to the same remedies against them or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this State.

STATE OF LOUISIANA,
OFFICE OF SECRETARY OF STATE,
New Orleans, July 25, 1876.

I hereby certify that the above and foregoing is a true and correct copy of section 2841 of Ray's Revised Statutes of the State of Louisiana of the year 1870.

Given under my hand and the seal of the State this twenty-fifth day of July, A. D. one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[PLACE OF SEAL.]

P. G. DESLONDE,
Secretary of State.

33 EXHIBIT C.

THE STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared William Fagan, personally known to me, who, being duly sworn, deposes and says that he is the criminal-sheriff of the parish of Orleans, in the State and district of Louisiana, and that by virtue of his said office he has full control and charge of the parish prison in the city of New Orleans, in said parish and State. Affiant further deposes that under and by virtue of section 2841, of the revised statutes of the State of Louisiana, passed and approved in 1870, he could receive and confine in said parish prison, and there safely keep until discharged by due course of law, any person who shall be sent to said prison or committed thereto by the marshal of the district of Louisiana, or his deputies, under the authority of the United States, whether on civil or criminal process, or upon any process or warrant which may be issued by the President of the United States or those to whom he may delegate authority, for any cause whatever under the laws of the United States. Affiant further swears that any person so sent or committed is subject to the ordinary rules of said prison; that he is permitted to wear his customary
34 clothing, to receive visitors at all times, to communicate freely with his friends, to provide himself with such comforts in his room and within the prison limits as his means justify and his tastes demand, and that no other restraints are imposed upon such a person than those necessary to secure his safe keeping. Affiant further swears that during the month of , 1876, he did receive and confine in said parish prison, from the marshall of the district of Louisiana, under process or warrant from the circuit court of the United States for the district and circuit of Louisiana, the persons of Otto H. Karstendick, John Henderson, Beales, Todd, and James, and that said persons were held by me so confined within the limits of said prison

until they were taken out for removal to the penitentiary at Moundsville, in the State of West Virginia.

WM. FAGAN.

Sworn to & subscribed before me this 22d day of July, A. D. 1876.
[SEAL.] CHAS. S. RICE,
U. S. Commis'r, Dist. of La.

EXHIBIT X.

STATE OF WEST VIRGINIA,
Office Secretary of State.

I, Charles Hedrick, secretary of the State of West Virginia,
35 hereby certify that I have carefully examined the laws of said State, and have not found any statute expressly authorizing any contract to be made by the directors of the penitentiary of said State, the board of public works, or other officer or officers or body representing said State, for the purpose of receiving or allowing the reception or keeping of prisoners sentenced by the United States courts to imprisonment; or any statute in any way expressly authorizing the reception or keeping of persons sentenced by said courts.

In testimony whereof I have hereunto set my hand
[PLACE OF SEAL.] and affixed the great seal of the said State, at the city of Wheeling, this first day of August, 1876.

C. HEDRICK,
Secretary of State.

EXHIBIT Q.

At a meeting of the board of public works, held in the office of the secretary of state, on the 17th day of March, 1876, the following order was entered:

An order of the board of directors of the West Virginia penitentiary was this day laid before the board, requesting the opinion of the board of public works as to the propriety of entering into a contract
36 with the Hon. Edwards Pierrepont, Attorney-General of the United States, touching the maintenance, clothing, and medical attendance of persons sentenced to imprisonment by the United States courts, at the same time the opinion of Attorney-General Matthews that the board of directors of the penitentiary have the right to enter into such contract, together with the blank contract to be entered into; also a letter of the Hon. H. G. Davis. Whereupon the following resolution was adopted:

Resolved, as the judgment of this board, that it is expedient for the directors of the penitentiary to enter into a contract at the rates proposed; provided, however, that the terms and conditions following shall be embraced in the contract, namely:

First. That the superintendent shall not be required to receive any greater number of prisoners than can be conveniently provided for from time to time; and,

Second. That upon the discharge of any *any* prisoners, incidental expenses, transportation, and clothing shall be furnished at the sole cost of the U. S. Government; and,

Third. That the contract may be cancelled by either party upon giving six months' notice, so far as the reception of new prisoners may be involved thereafter.

E. A. BENNETT,
President.

37 STATE OF WEST VIRGINIA,
Office Secretary of State.

I, Charles Hedrick, secretary of the State and ex-officio secretary of the board of public works of said State of West Virginia, and keeper of the records of said board, hereby certify the foregoing is a true copy from the records of said board of an order entered on the 17th day of March, 1876.

In testimony whereof I have hereunto set my hand
[PLACE OF SEAL.] and affixed the great seal of the said State, at the city of Wheeling, this first day of August, 1876.

C. HEDRICK,
Secretary of State and ex-officio
Secretary of the Board of Public Works.

Stipulation.

EX PARTE OTTO H. KARSTENDICK.

WASHINGTON, *Aug. 10th*, 1876.

Ex parte John Henderson on his application to the Chief-Justice of the United States for a writ of habeas corpus.

It is agreed between the the Attorney-General, on behalf the United States, and John H. Isley, of counsel for John Henderson, applicant for the writ:

38 1st. That an order to expedite and facilitate the proceedings, and to prevent unnecessary delay and expenses in the prosecution and trial of the said habeas corpus, the production of the body of the prisoner is dispensed with, and that it is conceded that the said prisoner is held and imprisoned by the superintendent of the penitentiary of Moundsville, West Virginla by virtue of a commitment, under the proceedings of the suit No. 512 in the circuit court of the United States, fifth circuit and district of Louisiana, entitled United States vs. Denis, O'Brine & al., without the necessity of a formal return from the said superintendent of the penitentiary.

2nd. That the case upon the petition, oaths, and exhibits will be submitted upon written arguments to the Chief-Justice, for his final decision thereon, and that if the application of the petitioner be sustained, he shall immediately be released from imprisonment, and discharged from custody of the superintendent of the penitentiary at Moundsville, W. Virginia.

DAVID C. LABATT,
For Karstendick.
JOHN H. ISLEY,
For John Henderson.
S. F. PHILIPS,
Sol. Gen'l, &c.

WASHINGTON CITY, D. C., *Aug't*, 1876.

39 *Opinion.*

IN THE MATTER OF THE APPLICATION OF OTto H. Karstendick for a writ of habeas corpus.

Karstendick, the petitioner, was indicted for a conspiracy, and convicted May 1st, 1876, in the circuit court of the United States for the district of Louisiana, under sec. 5440, Revised Statutes. The punish-

ment for his offence prescribed by the statute is a penalty of not less than one thousand dollars nor more than ten thousand, and imprisonment not more than two years. The sentence, as passed by the court, so far as it is material to the present enquiry, is as follows:

"And it having been in due form determined and ascertained that there is no penitentiary within the district of Louisiana suitable for the confinement of persons convicted of crime in the courts of the United States in said district of Louisiana, and the Attorney-General of the United States having, in due form and by and with competent authority, designated the penitentiary at Moundsville, in West Virginia, as the place of confinement, subsistence, and employment of all persons convicted, or who may hereafter be convicted, by the courts of the United States, of crime against the United States of America in said district of Louisiana, and such designation having been in due form notified to the
40 court and entered upon the record thereof, it is considered, by reason of the verdict herein, that the said Otto H. Karstendick be confined in the penitentiary of the State of West Virginia, at Moundsville, in said State, for and during the full period of sixteen calendar months from and after this day, and that he do also further pay a fine of two thousand dollars," &c.

In the execution of this sentence, Karstendick is now imprisoned in the penitentiary at Moundsville, and he seeks through this application to obtain a discharge, alleging for cause, that the order of the court for his imprisonment in a penitentiary, and without the State of Louisiana, is not authorized by law, and consequently void.

Sec. 5440 of the Revised Statutes is a reproduction of sec. 30 of an act of Congress passed March 2d, 1867, "to amend existing laws relating to internal revenue and for other purposes," 14 Stat., 484. At that time another act, passed March 3d, 1865, "regulating proceedings in criminal cases, and for other purposes," was in force, which provided, in section 3, that "in every case where any person convicted of any offence against the United States shall be sentenced to imprisonment for a period longer than one year it shall be lawful for the court by which the sentence is passed to order the same to be executed in any State prison or penitentiary within the district or State in which such
41 court is held, the use of which jail or penitentiary is allowed by the State legislature for such purposes," 13 Stat., 500. This provision is also reproduced in sec. 5541 of the Revised Statutes, save only that the words "State jail" are substituted for the words "State prison," where they occur in the original act.

As early as 1834 Congress enacted that whenever any criminal convicted of any offence against the United States shall be imprisoned in pursuance of such conviction or of the sentence thereupon in the prison or penitentiary of any State or Territory, such criminal shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which such prison or penitentiary is situated, and while so confined in such prison shall also be exclusively under the control of the officers having charge of the same under the laws of such State or Territory.—4 Stat., 739.

This provision is re-enacted in sec. 5539 of the Revised Statutes, the word "jail," however, being substituted in the revision for "prison," where it occurs in the original.

All these several statutes, being in pari materia, were, when in force before the revision, to be construed together. The same is true of the corresponding revised sections, and under this rule the same effect
42 must be given to section 5440 that it would have if it read as fol-

lows: All the parties to such a conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not more than two years, (sec. 5440.) If the sentence of imprisonment shall be for a longer term than one year the court passing the same may order it to be executed in any State jail or penitentiary within the district or State in which said court is held, (sec. 5541,) and the criminal so imprisoned shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which such jail or penitentiary is situated, and shall, while so confined therein, be exclusively under the control of the officers having charge of the same under the laws of the State."—(Sec. 5539.)

This language is explicit, and taken by itself is certainly sufficient to authorize imprisonment in a penitentiary, at the discretion of the court, in all cases where the sentence is for a longer term than one year. But the learned counsel for the petitioner in their argument refer to other sections of the statutes which in terms provide for punishment by imprisonment at hard labor, and they seek to confine the power of imprisonment in a penitentiary to such cases, because, as they claim,

43 imprisonment in a penitentiary necessarily implies imprisonment at hard labor, and where the punishment provided for by the statute is imprisonment alone, a sentence to confinement at a place where hard labor is imposed as a consequence of the imprisonment is in excess of the power conferred.

Notwithstanding the able and ingenious argument of counsel, I have not been able to arrive at this conclusion. In cases where the statute makes hard labor a part of the punishment, it is imperative upon the court to include that in its sentence. But where the statute required imprisonment alone, the several provisions which have just been referred to, place it within the power of the court, at its discretion, to order execution of its sentence at a place where labor is exacted as part of the discipline and treatment of the institution, or not, as it pleases. Thus a wider range of punishment is given, and the courts are left at liberty to graduate their sentences so as to meet the ever varying circumstances of the cases which come before them. If the offence is flagrant, the penitentiary with its discipline may be called into requisition, but if slight, a corresponding punishment may be inflicted within the general range of the law.

This view of the case is strengthened by a further examination of the legislation upon this subject. As early as 1825, in an "act more effectually to provide for the punishment of crimes against the United States, and for other purposes," it was enacted by Congress,

44 (sec. 15,) that "in every case where any criminal convicted of any offence against the United States shall be sentenced to imprisonment and confinement at hard labor, it shall be lawful for the court by which the sentence is passed to order the same to be executed in any State prison or penitentiary within the district or State where such court is holden, the use of which prison or penitentiary may be allowed or granted by the legislature of such State for such purposes."—4 Stat. 118. With this statute in force, the act of 1865, which has already been referred to, was passed, giving the same power in nearly the same words, where the punishment was by imprisonment for a longer term than one year, without any special requirement as to hard labor.

These two acts are separately re-enacted in the Revised Statutes. The act of 1825 is reproduced in sec. 5542, and that of 1865 in sec. 5541, the language of the two original acts being substantially retained in the revision. With this legislation in full force, it is impossible to believe it

was the intention of Congress to confine imprisonment in penitentiaries exclusively to cases in which hard labor is in express terms made by statute a part of the punishment.

Without extending the argument further upon this branch of the case, I am clearly of the opinion that the order of the court directing the imprisonment in a penitentiary is not void. It still remains to consider whether that part of the sentence which directed that the
45 imprisonment should be in the penitentiary at Moundsville can be sustained.

It is conceded that Congress has the power to provide that persons convicted of crimes against the United States in one State may be imprisoned in another. Congress can cause a prison to be erected at any place within the jurisdiction of the United States, and direct that all persons sentenced to imprisonment under the laws of the United States shall be confined there, or it may arrange with a single State for the use of its prisons, and require the courts of the United States to execute their sentences of imprisonment in them. All this is left to the discretion of the legislative department of the Government, and is beyond the control of the courts.

Acting under this power, Congress, while recognizing as a rule the propriety of sentencing those convicted of crime against the United States to imprisonment in the jails or prisons of the State where the*re* conviction was had, did, in 1864, to meet contingencies that might arise, enact that "all persons who have been, or may hereafter be, convicted of crime by any court of the United States, not military, the punishment whereof shall be imprisonment in a district or Territory where at the time of such conviction there may be no penitentiary or other prison suitable for the confinement of convicts of the United
46 States, or available therefor, shall be confined, during the term for which they may have been, or may be, sentenced, in some suitable prison, in a convenient State or Territory, to be designated by the Secretary of the Interior. (13 Stat., 74.) In 1872, the power of designating was transferred to the Attorney-General. This provision is also reenacted in sec. 5546 of the Revised Statutes, the word "jail" being substituted for "other prison" and "suitable jail or penitentiary" for "suitable prison" in the original act. This section is to be construed in connection with the other sections which have been referred to. In fact, it may be treated as a proviso to sections 5541 and 5542.

The counsel for the petitioner do not dispute the validity of this legislation, but they claim that in this case the conditions-precedent to the execution of the sentence in a prison outside of the State have not been complied with, and consequently that the case is not brought within the power of the court to make such an order.

It is first insisted that, as the State of Louisiana permits the use of its jails and penitentiaries for the punishment of criminals convicted in the courts of the United States, the sentences of imprisonment by those courts cannot be executed elsewhere. It is not enough that the jails and penitentiaries of the State may be used; they must also be suitable. Whether suitable or not is a question of fact. In this case
47 the court passing the sentence has determined this question, and found that in the State of Louisiana there was no penitentiary suitable for the confinement of persons convicted of crime against the United States.

This finding is conclusive until reversed, and it cannot be reviewed in this form of proceeding. To justify a discharge, under any writ to be issued upon this application, it must appear upon the face of the record that the order of commitment was void.

The court also decided that, under the circumstances of this case, the punishment should be by imprisonment in a penitentiary. This made it necessary to ascertain whether any penitentiary outside the State had been designated by the Attorney-General of the United States for use when that in the State was found to be unsuitable.

Upon this branch of the case the record shows that on the first day of April, 1876, the Attorney-General addressed the following communication to the United States attorney at Louisiana.

"Under the authority granted by section 5546 of the Revised Statutes of the United States, I designate the penitentiary at Moundsville, in West Virginia, as the place for the confinement, subsistence, and employment of all persons convicted by the courts of the United States for the district of Louisiana, of crimes against the United States, and sen-
48 tenced by said courts to imprisonment longer than one year. You will bring this designation to the notice of the courts, and have this order entered, if possible, on the records." This action of the Attorney-General was brought to the attention of the circuit court and the desired entry made.

This, as it seems to me, is clearly a designation under the statute, and I am unable to agree with the counsel for the petitioner in the opinion that it applies only to persons under conviction and sentence at the time the order was issued. It is true, the language is, "all persons convicted * * * and sentenced," and that certainly includes persons already convicted, but it does not necessarily exclude persons thereafter to be convicted. The statute makes it the duty of the Attorney-General to designate other places of confinement whenever the jails or penitentiaries of a State are unsuitable or unavailable. That it was his intention to act in reference to future convictions as well as to past is evident from the form of his communication, which is not addressed to, or, so far as appears, intended for, the marshal of the district, but to the attorney of the United States, for the purpose of being brought by him to the attention of the courts. An order from the Attorney-General to the marshal was all that was necessary to effect a removal after sentence passed. No action of the courts was required. A notification to
49 the courts was therefore only necessary for the purpose of influencing their conduct in the future. A sentence in this case for imprisonment in a state penitentiary would not have been void, but it might not have prevented the Attorney-General, acting under the statute, from directing a removal of the convict to some penitentiary outside of the State. Until such removal, the imprisonment in Louisiana would have been good. But if the court finds that the State penitentiary is unsuitable in fact, and the Attorney-General has designated another for the use on that account, I can see no reason why the court may not sentence the person convicted to imprisonment at the place designated. Suppose there had been no penitentiary at all in the State, and under the law the Attorney-General had made his designation, would it for a moment be doubted that a sentence to imprisonment at the designated place would be good? But if a penitentiary is unsuitable within the meaning of the statute, how is the case different in principle from what it would be if there were none? The order of the Attorney-General is equivalent to a finding by him that the penitentiary of the State was unsuitable or unavailable for the confinement of criminals convicted under the laws of the United States, and when this action of the Attorney-General is supplemented by a finding of the same
50 fact by the court, it seems to me to be as much within the power of the court to order the imprisonment at Moundsville as it would have been if there had been no penitentiary at all in Louisiana. It cer-

tainly could not have been contemplated that the courts must in all cases sentence to confinement in the state where the conviction was had, without regard to the fact whether it could be executed there or not, and that the sole power of directing the sentence to be executed in another State was vested in the Attorney-General. That is neither within the letter nor the spirit of the statute. The sole power of designation is in the Attorney-General; but when he has designated, if the facts which authorize the change of place exist, it is as much within the power of the court to order its sentence to be executed at the designated place as to determine which of two prisons in a State equally suitable and equally available for the punishment to be inflicted shall be employed for that purpose. The policy of the law is to avoid circuity of action, and to permit the courts to do directly, as far as possible, all that they may do indirectly.

Neither is it an objection to the order, as made, that the designation of the Attorney-General is of a penitentiary alone. If the sentence of the court had been imprisonment in a jail, and the jails of the State of Louisiana had been found unavailable or unsuitable, a designation
51 of some jail outside of the State might have been necessary before the court could have ordered a confinement outside of the State. But here the sentence is for imprisonment in a penitentiary; and as to that, as has been seen, there was a sufficient designation.

It is further insisted, on behalf of the petitioner, that the legislature of the State of West Virginia has not given its consent to the use of the penitentiary of the State by the United States for the punishment of their criminals, and that for this reason the order for his confinement there is void. The petitioner is actually confined in the penitentiary, and neither the State nor its officers object. Congress has authorized imprisonment as a punishment for crimes against the United States, in the States-prisons. So far as the United States can do so, they have made the penitentiary at Moundsville a penitentiary of the United States and the State officers having charge of it their agents to enforce the sentence of imprisonment passed by their courts. The question is not now whether the State shall submit to this use of her property by the United States, nor whether these State officers shall be compelled to act as the custodians of those confined there under the authority of the United States, but whether this petitioner can object if they do not. I think he cannot. So long as the State permits him to remain in her prison as the prisoner of the United States, and does not object to his detention by her officers, he is rightfully detained in custody under
52 a sentence lawfully passed.

For these reasons, as it has been stipulated between the parties that the merits of the case may be disposed of upon this motion, I must refuse the writ asked for.

WAITE, *Ch. J.*

SEPT. 1, 1876.

Order.

IN THE MATTER OF THE APPLICATION FOR THE allowance of a writ of habeas corpus of O. H. Karstendick.

The application in this case is denied. An appeal is allowed from this decision to the circuit court of the United States for the district of Maryland.

WAITE, *Ch. J.*

SEPT. 5, 1876.

Which being read and heard, the circuit court here passed the following order, to wit:

In the circuit court of the U. S. for district of Md.

IN THE MATTER OF THE APPLICATION OF } Appeal from order of Ch.
Otto H. Karstendick for habeas corpus. } J. Waite refusing writ.

The application in this case for a *a* writ of habeas corpus is hereby refused.

HUGH L. BOND.

53 And the said petitioner, by his attorney aforesaid, filed the following prayer for appeal:

Pe'tr respectfully prays an appeal to the Supreme Court at Washington, D. C.

D. C. LABATT,
Of Counsel.

Whereupon the circuit court here passed the following order, to wit: An appeal is granted in the above case to the Supreme Court of the U. S., returnable at Washington, D. C., on 2d Monday of Oct., 1876; & in the mean time the applicant to remain in custody.

HUGH L. BOND.

SEPT. 19, 1876.

In pursuance whereof, and according to the statute in such case made and provided, a record of the proceedings aforesaid, with all things thereunto relating, is hereby transmitted to the Supreme Court of the United States, to be held at Washington on the second Monday in October next, accordingly.

I hereby certify that the aforegoing is a true copy of the record and proceedings of the said circuit court in the case aforesaid.

54 In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court, this twenty-ninth day of September, A. D. 1876.

[SEAL.]

JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 735. Ex parte. In the matter of Otto H. Karstendieck, petitioner, appellant. Maryland C. C. U. S. Filed 3rd October, 1876.